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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**SECOND INTERIM REPORT
ON CONSTITUTIONAL REFORM
IN THE REPUBLIC OF MOLDOVA**

**adopted by the Commission
at its 43rd Plenary meeting
(Venice, 16 June 2000)**

I. Introduction

1. In April 1999, following the consultative referendum on the possible amendment of the Constitution of Moldova organised by President Lucinschi, the Committee on the Honouring of Obligations and Commitments by Member States of the Parliamentary Assembly of the Council of Europe, decided to ask the Venice Commission to follow constitutional developments in the Republic of Moldova. The Venice Commission was informed of this decision by letter of 3 May 1999. Furthermore, on 25 May 1999, the Commission was also asked to look at the question of constitutional reform by the Parliament of Moldova. The Parliament submitted to the Venice Commission a draft for a revision of the Commission prepared by 39 deputies.

2. On 13 June 2000, the Parliamentary Assembly of the Council of Europe asked the Venice Commission to examine all projects for constitutional reform currently examined by the Constitutional Court and by the Parliament. The Commission has appointed rapporteurs on these drafts and will adopt its opinion at its next Plenary meeting on 13 to 14 October 2000. The individual opinions will be forwarded to the Assembly as soon as they are available.

II Cooperation between the Venice Commission and the Moldovan authorities in 1999

3. On 1 July 1999, following the consultative referendum on the possible modification of the Constitution, the President of the Republic of Moldova, Mr P. Lucinschi, signed a decree setting up a National Committee to draft a law amending the Constitution of the Republic of Moldova (Constitutional Committee). Its aim was to propose changes which would reinforce the role of the executive. In the space of two months, the Constitutional Committee presented the Venice Commission with 4 versions of draft constitutional modifications, all of which aim to establish a presidential régime in Moldova.

4. At its 41st plenary meeting in December 1999, the Venice Commission adopted an interim report on constitutional reform in the Republic of Moldova and transmitted it to the Parliamentary Assembly of the Council of Europe (CDL (99) 88). The Venice Commission expressed the desire that all parties concerned continue to seek a consensus on constitutional reform.

5. As explained above, the Venice Commission was asked to examine the proposal of the 39 deputies. In its Interim Report it stated that the text was in conformity with democratic standards.

6. On the other hand, the Venice Commission considered that the Constitutional Committee's draft contained a number of elements which did not allow confirmation that it was in conformity with European democratic standards¹. At the same time, the draft in its entirety was unacceptable to the Parliament. The observations by the

¹ See pages 4-6 and 10 of the Interim Report on the constitutional reform in the Republic of Moldova prepared by M. Serhiy HOLOVATY (Member, Ukraine), Mr Giorgio MALINVERNI (Member, Switzerland), Mr Vital MOREIRA (Member, Portugal), Mr Kaarlo TUORI (Member Finland), Mrs Florence BENOÎT-ROHMER (Expert, France, Mr Joan VINTRO (Expert, Spain) adopted by the Venice Commission at its 41st Plenary meeting (Venice, 10-11 December 1999), Doc. CDL (99) 88.

Venice Commission appear in the Interim Report presented to the Parliamentary Assembly in December 1999.

7. A further draft, aimed at setting up a parliamentary régime in Moldova, was presented by 38 deputies in the Moldovan parliament. The Commission has not yet examined this draft.

III. The work of the Joint Committee

8. During his official visit to Moldova from 6 to 7 December, the President of the Parliamentary Assembly of the Council of Europe, Lord Russel-Johnston made an urgent appeal to the President of Moldova and to the Parliament, urging them to reach a compromise on the subject of constitutional conflict which opposes both sides on the manner of reinforcing the executive. Furthermore, he suggested “that a committee of wise persons, comprising members of the Moldovan parliament and personalities nominated by the President of the Republic, could, with the help of the Venice Commission of the Council of Europe, draw up such a compromise”².

9. Following this appeal, the President and the Parliament of the Republic of Moldova decided to create, in February 2000, a Joint Committee who would elaborate a single draft of constitutional amendments. This Committee would comprise three representatives of the President and three of the Parliament. The two sides asked that this Committee be chaired by Mr G. Malinverni, member of the Venice Commission, who accepted this proposal.

10. The Joint Committee met three times, on 9 and 10 March and on 26 and 27 May in Chisinau and on 7 and 8 April in Strasbourg. The Joint Committee prepared a draft proposal for the revision of the Constitution accepted by all its members (the text appears in Appendix I to this report). The final text was signed by the members of the Joint Committee.³

11. As stated above, the draft constitutes a compromise between the Parliament and the Constitutional Committee. Nevertheless, the participants were unable to agree on the two following important points: the right of the President to dismiss the Prime Minister and on the electoral system. On the first question the parliament categorically refused to concede this right to the Head of State. As for the electoral system, the parliamentarians considered that this reform should be made at a later date by way of changes to be made to the Electoral Code.

12. In this connection it should be mentioned that, at a time when the work of the Joint Committee was still in progress, the President of the Republic submitted a new draft text for examination to the Constitutional Court. The authors of the draft indicated that they had based themselves on the results of the work of the Joint Committee working under the aegis of the Venice Commission. When examining this text, it is apparent that there are important differences between the text proposed by

² *Press Release of 7 December 1999; Strasbourg, Council of Europe.*

³ *Mrs Postoiko, Member of the Joint Committee decided not to sign the text before consulting her Parliamentary Group (Communist Group), even though she personally was in agreement with the wording of the text.*

the Joint Committee and the text submitted by the President. Following a request from the President of the Joint Committee and the Secretary of the Venice Commission, the President of the Republic of Moldova accepted to respect a moratorium on all the work in the field of constitutional reform until the Joint Committee had finished its work. The Parliament did likewise for the proposals made by 39 and 38 Deputies already presented to the Parliament.

13. In accordance with the provisions of the Moldovan Constitution, all draft proposals for constitutional reform must first be examined by the Constitutional Court. It is now up to the President or to the Moldovan Parliament to submit the draft prepared by the Joint Committee to the Constitutional Court. Moreover, the drafts of the 39 and 38 members of the Parliament, already examined by the Constitutional Court, are with the Parliament, whilst the Presidential draft is still subject to examination by the Constitutional Court. None of the texts have been formally withdrawn. It is therefore uncertain that the text established by the Joint Committee will be accepted.

IV. Conclusions

The Venice Commission welcomes that the members of the Joint Committee were able to agree on a compromise text for constitutional reform. The amendments proposed take into account the experience of different European States and the needs of Moldova, and at the same time considerably reinforce the Executive without undermining the principle of separation of powers. The Venice Commission is hopeful that the text, which is the result of joint work by the representatives of the Parliament and the Constitutional Commission, will have the support of the authorities and of the different political forces represented in Parliament.

APPENDIX I

Chisinau, 27 May 2000

JOINT COMMITTEE
RESPONSIBLE FOR PROPOSING A DRAFT REVISED
CONSTITUTION FOR THE REPUBLIC OF MOLDOVA

PROPOSALS

FOR THE AMENDMENT
OF THE CONSTITUTION
OF THE REPUBLIC OF MOLDOVA
ADOPTED IN CHISINAU ON 27 MAY 2000

CHAPTER IV
PARLIAMENT

1. The Joint Committee has examined two proposals for reforming the electoral system, one from the Constitutional Committee which would entail electing 70 members of Parliament on a single-seat majority basis and 31 by proportional representation, and another which would entail electing all the members of Parliament by proportional representation in the constituencies. The Joint Committee has not been able to agree on either of these systems.

2. Letter "b" of Article 66 will read as follows:

"b) To call referendums within the meaning of Article 75."

3. The Third Section will be headed as follows: "Legislative procedure and referendums".

4. Article 72 is maintained in its 1994 version.

5. Article 74 will read as follows:

Article 74

The passing of laws and resolutions

1.) Constitutional laws shall be passed in accordance with the procedure provided for under Title VI of the Constitution.

2) Organic laws shall be passed by majority vote of majority of elected deputies based on at least two ballots.

3) Ordinary laws and resolutions shall be passed by the majority of the votes cast by the members present in session except where otherwise provided for in the Constitution. However, for such acts to be passed at least half of the members must be present.

- 4) Parliament shall examine bills introduced by the Government, as well as bills accepted by the latter in accordance with the order and priorities established by the Government. The Government may decide to ask that its bills be examined under urgent procedure.
- 5) The rules of procedure of Parliament shall set forth the procedures for passing organic laws, ordinary laws and resolutions, including urgent procedure.
- 6) The laws shall be submitted to the President of the Republic of Moldova for promulgation.

6. Article 75 will read as follows:

Article 75
Referendums

- 1) Problems of utmost gravity or urgency confronting the Moldovan society or State may be resolved by a Republic-wide consultative referendum. A consultative referendum on matters of national interest may be called by the President or by Parliament following mutual consultation in accordance with the legislation in force.
- 2) Constitutional referendums shall be organised and run in compliance with Articles 142 and 143 of the Constitution and with the legislation in force.
- 3) Problems of major importance for a given locality may be submitted to a local referendum in accordance with the legislation in force.

CHAPTER V
THE PRESIDENT OF THE REPUBLIC

7. Article 77 will be supplemented by a paragraph 3 reading as follows:

"The President of the Republic shall ensure respect for the Constitution and the proper functioning of the institutions. For this purpose, he shall act as a mediator between the state authorities and between the State and society."

8. Article 82 will read as follows:

Article 82
Nomination of Government

- 1) Within no less than fifteen days and no more than thirty days of the convening of Parliament and following consultation with the parliamentary groups, the President shall propose to Parliament a candidate for the office of Prime Minister. The candidate must be elected by an absolute majority of elected members within ten days. The person thus elected must be appointed by the President of the Republic of Moldova.
- 2) If the proposed candidate is not elected within ten days, Parliament may elect a Prime Minister by a majority of its elected members within fourteen days of the ballot provided for in paragraph 1 above.
- 3) If no candidate is elected within this time limit, a new ballot shall be held immediately, following which the person obtaining the highest number of votes shall be deemed elected. If the person elected obtains a majority of votes of the elected

members of Parliament, the President must appoint him within ten days of the election. If the person elected fails to obtain that majority, the President shall either appoint him within ten days or dissolve Parliament.

4) Ministers shall be appointed and dismissed by the President at the proposal of the Prime Minister⁴.

9. Article 85 will read as follows:

Article 85
Dissolution of Parliament

1) In cases where it is impossible to elect the Prime Minister in accordance with Article 82 paragraph 3 and where a motion of no confidence within the meaning of Article 106(1) has been passed, the President of the Republic, following consultation with the parliamentary groups, may dissolve Parliament.

2) Parliament may not be dissolved during a state of emergency, martial law or war.

10. Article 88f) will read as follows:

"f) call referendums within the meaning of Article 75."

11. Article 93 will be supplemented by a paragraph 3 reading as follows:

"Laws amending the Constitution shall be promulgated by the President of the Republic of Moldova within 15 days following their approval by referendum or 100 days after the passing of the law if no constitutional referendum has been initiated within that period."

CHAPTER VI
GOVERNMENT

12. The title of Article 96 will change to "The role of the Government and the responsibility of its members". The present paragraph 2 will be replaced by the following text:

"2) The members of the Government shall bear political responsibility for the management of their ministries within the terms established by the Constitution and the legislation in force."

13. Article 98 will be entitled "Taking up of office". The first three paragraphs will be deleted.

14. In Article 102 of the Constitution, "Acts of Government", the following amendments and additions will be made:

- a) In paragraph (1), incorporate the word "*ordinances*" after the word "*issues*".
- b) After paragraph (1), a new paragraph (2) will be inserted, reading as follows:

⁴ *The members of the Constitutional Committee believe that the President must have the power to dismiss not only the members of the Government but also the Prime Minister. This point of view is not shared by the parliamentarians.*

"(2) The ordinances shall be issued in accordance with Article 106(2)."

c) Previous paragraphs (2) and (3) become paragraphs (3) and (4) respectively.

15. Article 104 will read as follows:

"The Government shall supply Parliament with all the information and documents that it and its committees and individual members may request."

**CHAPTER VIII
RELATIONS BETWEEN
PARLIAMENT AND GOVERNMENT**

16. Article 106 will read as follows:

Article 106

Positive motion of no confidence

1) Parliament may carry a motion of no confidence in the Prime Minister if initiated by at least one-quarter of the members.

2) Parliament may express its opposition to the Prime Minister only by electing a successor by the majority of the members and by asking the President of the Republic to dismiss him. The President must accede to this request and appoint the person elected.

3) The motion of no confidence shall not be examined until at least 3 days have elapsed from the date when it was brought before Parliament.

17. A new Article 106(1) will read as follows:

Article 106(1)

Committal of responsibility by the Government

1) The Government may engage its own responsibility before Parliament for a programme, a general policy declaration or a bill.

2) The Government shall be dismissed if a motion of no confidence tabled by at least one-quarter of the members within three days following the tabling of the programme, general policy declaration or bill, is passed by the majority of the elected members.

3) If the Government is not dismissed in accordance with paragraph (2), the bill tabled shall be deemed passed, and the Government shall be under obligation to implement the programme or general policy declaration.

4) If the motion of no confidence is passed, the President may dissolve Parliament within 21 days. The right of dissolution shall expire as soon as Parliament has elected a new Prime Minister by the majority of the elected members.

18. A new Article 106(2) will read as follows:

Article 106(2)

Delegation of legislative power

- 1) The Government may ask Parliament, with a view to implementing its programme of activities, to authorise it to adopt ordinances in a given sphere, for a certain period of time.
- 2) Parliament grants the Government the authorisation provided for in paragraph (1) above by passing an organic law of authorisation, which must state the sphere and time limit in which such ordinances are to be issued.
- 3) Ordinances shall enter into force at the time of their publication. They are not to be promulgated. The bill approving the ordinance or ordinances shall be submitted to Parliament under the terms established by the law of authorisation. Any failure to comply with the time limit shall result in the ceasing of the effects of the ordinance. If Parliament does not reject the bill approving the ordinances, the latter shall remain in force. Following the expiry of the time limit mentioned in paragraph (2) above, the ordinances may be repealed, suspended or modified only by law."

TITLE IV

NATIONAL ECONOMY AND PUBLIC FINANCE

19. Article 131 "**National public budget**" of the Constitution will be supplemented by a new paragraph 4, reading as follows:

"4) Any legislative initiative or amendment resulting in an increase or a reduction in budgetary income or borrowing, or an increase or reduction in budget expenditure, may be adopted only after such increases or reductions have been agreed to by the Government."

Paragraphs 4 and 5 will become paragraphs 5 and 6 respectively.

TITLE V

CONSTITUTIONAL COURT

20. Article 135 a) and f) will read as follows:

"a) enforces on notification constitutional review of laws and orders of Parliament, Presidential decrees, ordinances and decisions of Government, as well as international treaties endorsed by the Republic of Moldova.

[...]

f) ascertains the circumstances justifying the suspension from office of the President of the Republic of Moldova or the interim office of the President of the Republic of Moldova."

TITLE VI

REVISING THE CONSTITUTION⁵

21. Articles 142 and 143 will be supplemented as follows:

⁵ *The representatives of the Constitutional Committee believe that this title must include provision stipulating that Parliament may not refuse the holding of a constitutional referendum and constitutional amendment if initiated by 200,000 citizens. The representatives of Parliament do not agree with this proposal.*

Article 142
Limits of revision

- 1) The provisions regarding the sovereignty, independence and unity of the State, the provisions set forth in Articles 1 to 6 above, as well as those regarding the permanent neutrality of the State may be revised only by constitutional referendum by a majority vote of registered voting citizens.
- 2) No revision shall be allowed if it results in the suppression of the fundamental rights and freedoms of citizens or of the guarantees of those rights and freedoms.
- 3) The Constitution may not be revised in a state of national emergency, martial law or war.

Article 143
The Law on Constitutional revision

- 1) Parliament must vote on any revision of the Constitution within⁶ no more than eighteen months following the date on which the draft was submitted. The law must be passed by a two-thirds majority of the members.
- 2) The law on constitutional revision shall enter into force 100 days after the passing of the law by Parliament and the publication of the draft in the *Monitorul oficial*, unless a constitutional referendum is initiated by 200,000 citizens or by the President of the Republic within the aforementioned period. If such a step is taken, Parliament, having first obtained the opinion of the Constitutional Court, shall organise the constitutional referendum in accordance with the law.
- 3) If the constitutional referendum provided for in Article 142 (1) yields a negative result, the law submitted to the referendum shall be deemed null and void.
- 4) If the constitutional referendum provided for in paragraph 2 above yields a negative result, the law submitted for approval shall be deemed passed.

* * *

Done in Chisinau on 27 May 2000 in triplicate in the presence of:

Giorgio MALINVERNI
Chairman of the Joint Committee

Mihai PETRACHE (signature)
Anatol PLUGARU (signature)
Maria POSTOIKO
Eugen RUSU (signature)
Vladimir SOLONARI (signature)

⁶ The Parliamentary representatives propose that the words "no less than six months" be included at this point. The representatives of the Constitutional Committee do not agree with this proposal.